

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
T. GILBERT, ) OTA NO. 21088441  
 )  
 )  
 ) APPELLANT.  
 )  
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 )  
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Tuesday, July 26, 2022

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER



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APPEARANCES:

ADMINISTRATIVE LAW JUDGE: JOHN JOHNSON

For the Appellant: T. GILBERT

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD

TOPHER TUTTLE  
MARIA BROSTERHOUS

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-8 were received at page 6.)

(Department's Exhibits A-G were received at page 6.)

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California; Tuesday, July 26, 2022

2:08 p.m.

JUDGE JOHNSON: We're now going on the record.

This is the Appeal of Gilbert, OTA Case Number 21088441. It is 2:08 on July 26th, 2022, and this hearing is being conducted electronically lead by myself, Judge Johnson, here in Sacramento, California.

This appeal is being heard and decided by a single Administrative Law Judge under the Office of Tax Appeals Small Case Program. I just remind today's participants and viewers that the Office of Tax Appeals is not a court. It's an independent appeals body. The office is staffed by tax experts and is independent of the State's tax agencies.

In other words, OTA does not engage in any ex parte communications with either party, and our decision will be based on the arguments and evidence provided by the parties on appeal, in conjunction with the appropriate application of the law.

Let me have the parties introduce themselves.

I'll start with Mr. Gilbert.

MR. GILBERT: Yes. Hi. My name is Travis Gilbert, Jr.

JUDGE JOHNSON: Thank you.

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And for Franchise Tax Board.

MR. TUTTLE: My name is Topher Tuttle.

MS. BROSTERHOUS: Maria Brosterhous.

JUDGE JOHNSON: Thank you.

This is Judge Johnson again.

The issue we have on appeal is whether Appellant has shown error in Respondent's proposed assessment with the 2015 tax year, which is based on a federal determination.

The parties have provided exhibits. Appellant has provided Exhibits 1 through 8, and Respondent has provided Exhibits A through G. Those exhibits are hereby admitted as evidence into the record.

(Appellant's Exhibits 1-8 were received in evidence by the Administrative Law Judge.)

(Department's Exhibits A-G were received in evidence by the Administrative Law Judge.)

At this stage we're ready for the parties to provide their presentations.

And let me ask before we go that way, Respondent, did you have any other questions before we started?

MR. TUTTLE: No, sir.

JUDGE JOHNSON: Okay. And Appellant Mr. Gilbert, are you ready to begin?

MR. GILBERT: Yes, sir. I am.

1 JUDGE JOHNSON: Okay. Let me have you swear in  
2 first. If you could raise your right hand.

3

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TRAVIS GILBERT,

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produced as a witness, and having been first duly sworn by

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the Administrative Law Judge, was examined and testified

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as follows:

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JUDGE JOHNSON: Great. You can begin whenever

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you're ready.

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PRESENTATION

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MR. GILBERT: Okay. This will be very -- just

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very quick on my part. I'm referring to a letter which I

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had sent to the Tax Appeal Board on December of 2020,

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which I have a registered -- which I sent by registered

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mail. And in there I had explained to the Tax Board that

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I -- about the audit that was in 2015, that was from

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Mr. Steven Walker there from the IRS. His ID Number is

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10018274 -- no, excuse me -- 27847. Let me repeat that,

21

1001827848.

22

And I asked for information on the tax year 2015,

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and he didn't provide me with any of this information. I

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also asked for the explanation of the taxpayer's Bill of

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Rights, and on that there I did not receive any

1 information. I'd made several phone calls to him as well  
2 as his supervisor, Ms. Ellen Murphy. And to this date I  
3 have yet to receive any information as to how they came up  
4 with the amount for the tax year of 2015.

5 And it's hard for me to mount a good defense  
6 without knowing as to what I'm -- as to what they were  
7 allowing and what they were not allowing. And I have yet  
8 to hear back from Mr. Walker or from Ms. Murphy here. And  
9 as well as I'd asked the California Tax Board if they had  
10 any information on this, and I yet to receive a response  
11 from them as to why they're basing their findings on what  
12 the IRS had to say.

13 And that's basically all I have. So it's hard  
14 for me to mount a defense without knowing as to what I  
15 need to provide information for.

16 JUDGE JOHNSON: This is Judge Johnson. Thank  
17 you, Mr. Gilbert.

18 MR. GILBERT: Thank you, sir.

19 JUDGE JOHNSON: Respondent, did you have any  
20 questions for Mr. Gilbert?

21 MR. TUTTLE: No questions. Thank you.

22 JUDGE JOHNSON: Okay. This is Judge Johnson.

23 Mr. Gilbert, can I just clarify that the number  
24 you read off for Mr. Walker that was -- not the actual  
25 number itself, but what was the reference number again?

1 MR. GILBERT: Okay. This was for -- on a letter  
2 which I'd sent to the Tax Board about the audit for the  
3 year 2015 for Mr. Steven Walker, that is his employee ID  
4 number.

5 JUDGE JOHNSON: Okay. That's fine. That's all I  
6 was looking for there.

7 MR. GILBERT: Yeah. And I'm sorry. I failed to  
8 mention the employee part, sir.

9 JUDGE JOHNSON: Not a problem. Okay. Thank you  
10 very much.

11 MR. GILBERT: Thank you, sir.

12 JUDGE JOHNSON: That's the only question I had.

13 Let me turn it to the Franchise Tax Board.  
14 Mr. Tuttle, if you are ready to begin, you have five  
15 minutes. And if you can address at all Mr. Gilbert's  
16 concerns that he expressed, that would be helpful.

17 MR. TUTTLE: I will. Thank you.

18

19 PRESENTATION

20 MR. TUTTLE: Good afternoon. Again, my name is  
21 Topher Tuttle, and I'm representing Respondent Franchise  
22 Tax Board. And with me is Maria Brosterhous, also of the  
23 Franchise Tax Board.

24 The single issue before you today is whether  
25 Appellant has established error in FTB's proposed

1 assessment for the 2015 tax year which was based on a  
2 federal assessment. Revenue & Taxation Code Section 18622  
3 requires the taxpayer to concede the accuracy of federal  
4 changes or state where the changes are erroneous. Under  
5 Todd versus McColgan, it is well-settled that FTB's  
6 deficiency assessment is presumed correct, and the  
7 taxpayer bears the burden of proving error in FTB's  
8 determination.

9 In this case, FTB originally received notice from  
10 the IRS that it had audited Appellant for tax year 2015  
11 and disallowed certain Schedule C business expenses. FTB  
12 then made corresponding adjustments in its proposed  
13 assessment.

14 To speak to Appellant's concerns, these  
15 adjustments are listed in FTB's proposed -- Notice of  
16 Proposed Assessment, and we also provided the report from  
17 the appeals hearing at the IRS level. It's Respondent's  
18 Exhibit B, which is eight pages, and it lists the IRS'  
19 review of each of the adjustments it made to Appellant's  
20 federal tax account for tax year 2015. It lists many of  
21 the documents and evidence Appellant provided to  
22 substantiate the disallowed adjustments. And it also  
23 lists the IRS' determination that he had failed to carry  
24 his burden of proof at that level.

25 Again, FTB made corresponding adjustments in its

1 proposed assessment after it received notice of the  
2 federal action. Now, FTB is not bound to follow the IRS'  
3 adjustments if Appellant were to establish that any or all  
4 of them are erroneous. However, Appellant has not  
5 provided any primary source documentation to establish  
6 that the IRS's adjustments are erroneous. The  
7 unsubstantiated profit and loss statements Appellant has  
8 provided on appeal are insufficient to establish his  
9 eligibility for the claimed deductions.

10 In addition, although the primary source receipts  
11 and expense documents have not been provided in this  
12 appeal, the IRS appears to have had access to this  
13 information during its audit and still found it lacking.  
14 Thus, Appellant has failed to satisfy his burden of proof,  
15 and FTB's proposed assessment should be sustained.

16 I'm happy to answer any questions you may have.  
17 Thank you.

18 JUDGE JOHNSON: This is Judge Johnson. Thank  
19 you.

20 Mr. Gilbert, you have up to five minutes if there  
21 is anything else you want to respond to that Respondent  
22 just said or anything else you would like to add.

23  
24 CLOSING STATEMENT

25 MR. GILBERT: No, sir. The only I -- I'm going

1 back to what I was saying in the beginning when I was  
2 reading of -- off from the letter which I provided for the  
3 Tax Board was that I have yet to hear back from the IRS as  
4 what -- as to why they chose this year, why they chose  
5 the -- that I was not allowed the deductions and -- and  
6 the hearings which I had asked for from both Mr. Walker  
7 and Ms. Ida Murphy here.

8 They have yet to respond to my letters and my  
9 requests for this information. So it's hard for me to  
10 mount a defense for something of which I have no idea.

11 JUDGE JOHNSON: This is Judge Johnson. Okay.  
12 Thank you, Mr. Gilbert.

13 MR. GILBERT: Thank you, sir.

14 JUDGE JOHNSON: We have all the evidence  
15 submitted into the record, as well as the arguments and  
16 your briefs and your oral arguments and testimony today.  
17 Thank you. We now have a complete record from which to  
18 base a decision.

19 Any final questions before we conclude this  
20 hearing, Mr. Gilbert.

21 MR. GILBERT: No. I would like to say all -- I  
22 would like to say once again all the information that  
23 which the Tax Board has, just to make sure I did get  
24 everything, sir. Because everything I sent to the  
25 California Tax Board has been through my registered

1 letters or through fax. And --

2 JUDGE JOHNSON: All right. Thank you, sir.

3 MR. GILBERT: Excuse me, Your Honor. And I would  
4 appreciate any help in which they can give me.

5 JUDGE JOHNSON: Judge Johnson again. Thank you,  
6 Mr. Gilbert.

7 I know in the record we have all the exhibits,  
8 that I mentioned, A through G that were provided with the  
9 brief, as well as your exhibits 1-8. So that's all the  
10 information that we have as well.

11 MR. GILBERT: Thank you, sir.

12 JUDGE JOHNSON: Okay. Any final questions from  
13 Franchise Tax Board?

14 MR. TUTTLE: No. No further questions.

15 JUDGE JOHNSON: Thank you.

16 Judge Johnson again. I wish to thank both  
17 parties again for their efforts in this manner. This  
18 concludes the hearing for this appeal. The parties should  
19 expect our written opinion no later than 100 days from  
20 today. With that, we are now off the record.

21 (Proceedings adjourned at 2:18)

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HEARING REPORTER'S CERTIFICATE

I, Ernalyne M. Alonzo, Hearing Reporter in and for the State of California, do hereby certify:

That the foregoing transcript of proceedings was taken before me at the time and place set forth, that the testimony and proceedings were reported stenographically by me and later transcribed by computer-aided transcription under my direction and supervision, that the foregoing is a true record of the testimony and proceedings taken at that time.

I further certify that I am in no way interested in the outcome of said action.

I have hereunto subscribed my name this 4th day of August, 2022.

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ERNALYN M. ALONZO  
HEARING REPORTER